

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 346 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

KAMAL METAL QUARRY

Versus

LAXMICHAND BHAGAJI

Appearance:

MR BR PARIKH for Petitioners
Respondent, though served, absent.

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 06/12/96

ORAL JUDGEMENT

By this revision application, the petitioners have challenged validity of an order dated 8th September, 1991 passed by the Civil Judge (Senior Division), Godhra below Exh. 1 in Civil Misc. Application No. 83/86. The said application was filed for setting aside an ex-parte decree dated 22nd September, 1986 passed in Special Civil Suit No. 96 of 1985. Facts, as stated by learned advocate Mr BR Parikh appearing for the petitioners, are as under :-

The present respondent had filed Special Civil Suit No. 96 of 1985 against the present petitioners for recovery of a sum of Rs. 1,43,782-52 ps. alongwith interest thereon. The said suit was fixed for hearing on 1st September, 1986. Evidence of the plaintiff was to be recorded on that day. As the advocate appearing for the defendants was absent due to his sickness, the matter was adjourned to 9th September, 1986. Evidence was recorded on 9th September, 1986 and the matter was thereafter adjourned to 10th September, 1986. On 9th and 10th September, 1986, the advocate appearing for the defendants i.e. the present petitioners could not attend the Court, as he was staying in Baroda and during the said period there was curfew in Baroda City.

As the advocate for the defendants was absent, the learned Judge ultimately passed an ex-parte decree on 22nd September, 1986. Being aggrieved by the above referred judgment and decree, Civil Misc. Application No. 83/86 was filed by the defendants for setting aside the ex-parte decree.

The above referred application was heard by the trial Court and was ultimately allowed but with a condition that the defendants should pay a sum of Rs.500/- by way of costs to the plaintiff and 50% of the suit amount should be deposited by the defendants in the Court.

Being aggrieved by the above referred order passed in Civil Misc. Application No. 83/86 dated 8th September, 1991, the defendants have approached this Court with this revision application.

Learned advocate Mr BR Parikh has vehemently submitted that once the trial Court was convinced of the fact that the advocate appearing for the defendants could not attend the Court for the reason beyond his control, namely curfew in city of Baroda, where the advocate was residing, it was not proper on the part of the trial Court to pass a conditional order whereby the defendants were directed to deposit 50% of the suit amount. He has drawn my attention to the fact that necessary evidence was led to show that the advocate appearing for the defendants was staying in Baroda and on the day on which the matter was to be heard by the trial Court, curfew was imposed in Baroda. My attention was also drawn to the averments made in the impugned order to the effect that necessary paper cuttings were exhibited to show that there was curfew in city of Baroda. Moreover, an

application was also given by the defendants for summoning an employee of the Commissioner of Police, Baroda City to adduce evidence so that the trial Court can be convinced of the fact that it was impossible for the advocate to move out of his residence when the matter was conducted before the trial Court.

It is pertinent to note that the plaintiff i.e. the present respondent could not controvert the above referred facts and even the trial Court believed that the learned advocate appearing for the defendants was prevented by virtue of the above referred reason from attending the trial Court at Godhra.

Learned advocate Mr BR Parikh has strenuously submitted that in the above referred circumstances, the trial Court ought not to have saddled the defendants with a liability of depositing 50% of the suit amount. It has been submitted by Mr Parikh that the defendants have a very good defence and the defendants are hopeful of succeeding in the suit. Be that as it may, at this stage I am not concerned with the final outcome of the suit. What is to be examined is whether such a condition could have been imposed upon the defendants though the trial Court was convinced that the advocate for the defendants could not attend the Court for the reasons beyond his control.

The respondent-plaintiff though served has not appeared either in person or through a lawyer.

In the above referred circumstances, it is very clear that the trial Court has exercised its jurisdiction with material irregularity while directing the defendants to deposit 50% of the suit amount while granting the application for restoration.

In the circumstances, the revision application deserves to be allowed. The direction with regard to deposit of 50% of the suit amount incorporated in order dated 8th September, 1991 passed by the Civil Judge (S.D.), Godhra in Civil Misc. Application No. 83/86 is hereby quashed and set aside. The suit was filed in 1985 and, therefore, it is hoped that the said suit will be heard as soon as possible and without any unavoidable delay.

Learned advocate Mr Parikh has fairly submitted that the defendants will extend their full co-operation to the trial Court in proceeding with the matter. The order with regard to payment of costs to the tune of

Rs.500/- appears to be reasonable and, therefore, the said direction remains as it is. The petitioners shall either pay the said amount to the respondent or shall deposit the said amount with the trial Court on or before 28th February, 1997.

The revision application is allowed. Rule is made absolute accordingly with no order as to costs.

sundar./